

Testimony of Jeffrey Levy
Before the ERISA Advisory Council

“Model Notices and Plan Sponsor Education on Lifetime Plan Participation”

Good morning. My name is Jeffrey Levy, and I am the Managing Partner of Cammack Retirement Group. I’m pleased to be here today to provide my insight into ways I believe that Plan sponsors can better educate and communicate the importance of lifetime participation in ERISA plans to participants, as well as approaches to Plan design that would encourage such lifetime participation. Focused attention to potential data issues associated with retirement assets and these communication initiatives is also an important component of ensuring their long term retirement security, however, I will not attempt to address the types of security concerns that the record-keepers and administrators of these programs must protect against. I should finally note that comments are my own and do not necessarily reflect the position of my firm or my colleagues.

An actuary by training with more than thirty-five years in the retirement industry, I have spent a considerable portion of the last ten years providing consulting in the defined contribution area, and in support of the defined benefit to defined contribution migration of retirement programs. I applaud the Council’s efforts to educate Plan sponsors and participants on the benefits of lifetime plan participation, and plan design approaches that will help ensure that participants maximize their savings at retirement. Although recent efforts to encourage participation through automatic savings methods have begun to produce results, we all recognize that the *average* account balance in retirement programs today, coupled with personal savings is woefully short of providing adequate retirement income. The efforts discussed in these meetings can hopefully make meaningful improvements in retirement plan sufficiency, if properly executed. Even slight improvements in the average expense in a retirement program, made possible by lifetime participation in (typically) less costly ERISA plans, can increase a participant’s retirement accumulation in a material manner.

MODEL NOTICES

I’d like to begin with a discussion on observations surrounding the content and timing of **model participant notices**. From my perspective, participants have an extremely short attention span today, and only focus on information provided with respect to the retirement program when required to make elections or upon an event in their lives, such as a pending retirement, hardship or change in career. In addition, as the expression goes, “you must be in front of the buying public, when they are ready to buy”. Therefore, it is important to regularly remind participants where they can go to get additional information on the retirement program. The following provides some thoughts on when it might be appropriate to outline where participants can receive such information:

- At Hire: An important stage to convince participants to hopefully join the retirement savings program, through educational or automatic enrollment methods. This first stage should also be used to drive the participant focus on where they can receive ongoing information.
- Regularly during career: A footnote on participant statements can be an effective tool to regularly reinforce where additional information can be found. Alternatively, periodic mailings to reinforce the availability of such information can be effective to remind people when they are ready to “buy”
- At other specific times in a participant’s career: For example, upon reaching a specific age (e.g. 55), communications can be provided to begin focusing the participant on issues such as additional retirement planning, and where to go to obtain additional information. In a similar manner, when participants make inquiries about the plan provisions related to beneficiary designations, hardships, loans or other termination information, selected information can be provided to ensure that these participants are informed where they can go to receive additional information (and to reinforce lifetime plan participation).

- Each of these points in time can be event dates that trigger automatic notices, based on a participant requests or individual demographics. They can then be supplemented by other group or individual participant educational or planning sessions based on the specific approaches taken by the plan sponsor to support participant education.

As mentioned earlier, participants have extremely short attention spans today, unless they are focused on a particular life event. Therefore, notices should be very short with “sound bite” approaches taken to communicate information. It can also be effective to have more expanded notices on selected components of the topic identified in the communication, in order to provide more detailed information desired by the participant. These expanded topics can also be combined to focus on a specific topic of major importance, such as our goals here of encouraging lifetime plan participation. Let’s take an example. The following list (in no particular order) identifies sample categories of topics which might be of interest to participants on a standalone basis:

- The basics of distribution options under the program, including such topics as general tax implications and the impact of loan defaults on retirement accumulations
- Issues to consider when planning your retirement
- Why leaving an account in the retirement plan after termination or retirement, may be an important consideration
- Comparisons of the features of IRA accounts versus employer sponsored ERISA programs, including differences in share classes offered to participants
- Average cost of an ERISA plan, versus an IRA (could include specific expense of the sponsor's plan, if available)
- The impact of lowering the expenses charged to a retirement account, with projections illustrating the impact of such over several future time periods
- The pros and cons of converting all or a portion of a retirement account to an annuity
- The benefits afforded participants in employer sponsored plans, such as investment oversight, expense negotiation, etc.

These topics and many others can be used as educational materials for participants to reference as they desire, and can also be combined to create the “case” for the benefits of lifetime plan participation. The key is providing short informational topics that are easy to read, easy to reference, and that when combined can help create appropriate themes to help participants focus on important concepts.

The goal of the above is to encourage participant evaluation and behavior appropriate for their situation, without providing advice. This might include projections on issues such as the lost opportunity cost of taking termination distributions early from a plan, or from hardship withdrawals. For example, providing distribution information only after requiring some form of participant action, such as having gone through a retirement seminar, has also proven to be a powerful method of focusing activity that is in the best interest of participants.

This contrasts with situations where the participant ends up making such decisions without sufficient time, and after receiving typically limited information from sources trying to sell specific products or services. The process can also be highly effective when combining this information supplemented with the availability of a Q&A session with a call center or human resources representative. Unfortunately, smaller employers frequently do not have the infrastructure available to them to offer such an approach.

Another challenge in many instances is finding the right medium to communicate the above concepts to different groups of participants who have significantly different approaches to obtaining information on a day-to-day basis. Model written notices cannot be too lengthy. Disclaimer and compliance footnotes need to be carefully included, but should not be the focused theme or first component of the information. Charts and graphs can be effective if used to compare approaches, but need to be extremely simple without too much data or concepts presented in the illustrations.

Beyond written model notices, the following attempts to provide a summary of other common mediums used to communicate information to plan participants. For many plan sponsors, multiple mediums are required in order for the program to be effective:

- Web-based informational access
- Social media
- Educational software (apps, etc.)
- Contests, where departments, etc. compete against each other in learning activities
- Videos
- Podcasts
- Call centers

Each of the above can be more or less effective, depending on the culture of the organization and make-up of the participant population. Mediums and activities that incorporate peers within the organization tend to be extremely effective, such as using actual participants in an educational video or creating a learning contest, where select groups are competing against each other while learning important retirement topics. In general, all of the concepts noted above can be translated into multiple mediums, once the likely approaches most effective for the population has been identified.

The personalization of model notices, etc. can also be very effective learning tools, if data is readily available, and the plan sponsor has the capability to incorporate such internally or through their vendor. Sample ways to include such personalized data include:

- Different notices/models based on age or job position
- Projections of benefit accumulations, including the impact of a 1% change in retirement readiness or in savings rate
- Projections including defined benefit programs, social security and other frozen benefit programs
- Other investment related projections, based on current allocations, risk tolerance, etc.

These and many other variations can be effective tools if the Plan sponsor can properly track data, and has the ability to feed the information to internal systems or to the vendor. Such data can also be used to develop programs to better illustrate the negative impact of withdrawing assets (loans, hardships, etc.), which can be effective in discouraging such activity. The challenge in many situations is the accuracy of data, nuances in how different situations might impact the accuracy of projections, and a general lack of data integrity and security for many employers. Therefore, it is recommended that such customization is left to only the most sophisticated employers and/or to vendors who validate the information, if used in creating notices and projections. In any event, data needs to be carefully vetted if used to show anything more than simple projections or possible impact of select participant activities.

Some final comments on using model notices may be appropriate:

- The required regulatory notices sent to participants today can be confusing and in many instances provide so much detail that participants simply do not read them. In most cases, the model notices being discussed here should only reference these other required communications as a way to supplement information for those wanting expanded details or to highlight disclosure that should be made to plan participants.
- Many plan sponsors have created a more building block approach to educating participants through multiple communications that each build on prior information distributed to plan participants. This can be effective, if coupled with a broader program using other medium as noted previously. Again, participant overload is a key concern that must be monitored.
- The use of annuity offerings in defined contribution retirement programs is gaining significant interest by participants, however plan sponsors are increasingly concerned about the fiduciary liability and responsibilities surrounding the choice of the annuity provider. Safe harbor pronouncements or other regulatory mandates for the offering of annuities will become ever more important in order for plan sponsors to support minimizing the focus of lump sum distribution options in these programs. Such mandates on appropriate annuity offerings will also be important in the future, if plan sponsors are to consider more innovative approaches, such as “automatic annuity defaults” for participants who otherwise make no election at termination of employment.

PLAN FEATURES

Many retirement programs today are using innovative plan features to encourage lifetime participation. In a similar manner to that used to communicate model notices to participants, sponsors prefer short succinct summaries of programs that might be appropriate for them to consider. These could take the following forms:

- FAQs: Summary information that outlines the concept being addressed, pros and cons of the program illustrated, and a brief description of the methodology. This approach is most effective if written in a manner that allows the Plan sponsor to quickly locate topics of interest, a brief roadmap of the issue and where to go for additional information.
- Building block educational materials: Building block educational programs can be very effective in educating a participant who has no knowledge of a topic to one that is comfortable in understanding their options, and making informed decisions on a timely basis. Sample approaches to delivering such step-by-step education, timelines for delivery and effective medium suggestions all provide a good foundation for the Plan sponsor to consider the process.
- Short Plan sponsor suggestions to incent participant behavior: Effective “quick hits” that have worked to drive participant behavior can be effective for Plan sponsor adoption. For example, illustrating projected “losses” due to interest compounding, etc. at a future date, when participants take early distributions, can be effective to get participants thinking about the risk/return of withdrawing account balances at termination of employment. This can be more effective, than simply discussing one-time tax consequences. Such samples help drive plan sponsor adoption.
- Case studies: Summaries of Plan sponsor initiatives that have successfully driven participant behavior tends to be one of the most effective means to create action. Sample communication program rollouts, successful building block campaign themes, peer message delivery approaches, etc. that are outlined for Plan sponsors, can be effective in allowing others to replicate an approach that will work for their participants.

Some of the plan features that have been successfully used to drive participant behavior recently include the following:

- Post-employment loans: It is unfortunately common that participants who terminate with outstanding loans simply default on the loan, taking it as taxable income. Allowing for continuing loan payments and even potentially allowing for new loans for terminated participants will likely help retain the account balances in less expensive ERISA programs, and incent the lifetime plan participation goal.
- Fixed income options: The variety of these options available to plans today tend to be much more attractive to participants, versus that offered in IRA programs. Stable value and related guaranteed return funds are very popular with participants, and may help drive participant behavior to leave balances in the Plan sponsor program upon termination of employment.
- Annuity offerings: Participant interest in lifetime income has risen significantly over the last few years, and will likely increase even further as the baby boomer population moves into their retirement years. As noted previously, Plan sponsors want to consider such offerings, but need compliance rules to allow for safe harbor selections of annuity providers.
- Rollovers: The ability to accept rollovers from any qualified program could be a major driver of retirement plan asset retention for Plan sponsors. Therefore, streamlining the rollover process from a data integration perspective, as well as legislative changes to allow for more asset consolidation can go a long way to incenting lifetime plan participation.

With the increase in the scrutiny of fiduciary practices today, Plan sponsors are leery of providing any information that might be considered advice to participants. Educational efforts must therefore focus on providing factual information versus one-sided discussions. This can be accomplished by presenting pros and cons of all options, case studies that balance issues that make an option better in some circumstances versus others, as well as short succinct decision “trees” can also be effective in presenting information for participants to make informed decisions without providing advice. Discussions that focus participants on how the options available to them need to be assessed as compared to their goals, coupled with illustrations on how each option will affect their long term retirement sufficiency, can also be effective in allowing the participant to make informed decisions without providing advice.

As noted above, the industry focus on the automatic features of plan participation has helped to improve the retirement sufficiency of participant accounts; however there are still large gaps in the average benefit available to participants versus that required to live comfortably in retirement. The issues being focused on by the Advisory Council to incent lifetime plan participation, minimize “leakage”, improve plan features and better communicate options available to participants will continue to improve the retirement profile of participants. An ongoing effort to educate and incent participants to share the responsibility to save for their own retirement is also a critical ongoing focus of the industry.